IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Urgency Application No. 3107 of 2006
In
Writ Petition No. 5107 (S/S) of 2001
Old Number
(Writ Petitioner No. 9106 of 2000)

Smt. Indira Balmiki,
Wife of Sri Krishna Kumar Ranjan,
Resident of Hari Niwas, Joshi Khola,
Rajpur,
District – Almora. **……Petitioner.**

V e r s u s.

1. Nideshak, Mahila Kalyan, U.P., 8th Floor, Jawahar Bhawan, Lucknow.
2. Dy. Chief Probation Officer, Kumaon Mandal, Nainital.
3. District Probation Officer, Almora.
4. State of U.P. through Secretary, Mahila Evam Bal Vikas Vibhag, U.P., Lucknow.

……..Respondents.

Hon'ble Rajesh Tandon, J.:

Heard Sri Manoj Tiwari, learned counsel for the petitioner and standing counsel for respondents.

By means of this writ petition, the petitioner has prayed for the issue of a writ in the nature of Certiorari quashing the order dated 29.01.2000 passed by respondent no. 1 by which the appointment order dated 16.07.1994 and promotion order dated 28.10.1996 passed in favour of the petitioner has been cancelled.

Briefly stated the petitioner was selected in an open competition for training as Aangan Bari Teacher and thereafter, she was sent for training under the Aangan Bari Prashikshan Yojna to Aangan Bari Karyakarti Prashikshan Kendra, Saharanpur and necessary certificate was given to the petitioner by the Competent Authority. The State Government in the financial year 1989-90 had sanctioned one Rajkiya Shikshushala and Bal Bari Kendra for Malin Basti, Rajpur, Almora. Three posts, namely one post of Teacher, one post of untrained Nurse and one post of Aaya, were sanctioned by the State Government for Rajkiya Shishushala, Rajpur, Almora. On 04.11.1993, the petitioner was appointed as Aaya on daily wage basis for 89 days by the District Social Welfare Officer, which was extended from time to time. On 16.07.1994 the petitioner was given regular appointment on the post of Aaya on the pay scale of Rs. 750 – 940 by the Chief Development Officer/ District Social Welfare Officer, Almora.

Learned counsel for the petitioner has submitted that District Social Welfare Officer is competent authority for appointment of Class III and IV employees at the relevant time.

On 28.10.1996, the District Magistrate, Almora promoted the petitioner on the post of Teacher on consolidated salary against the vacant post and since 29.10.1996 the petitioner was working as Teacher. Thereafter, in the month of August, 1998, the Director,

Mahila Kalyan had notified several vacancies of Nursery Teacher, Assistant Teacher and Silai Prashikshak. On 29.01.2000, the respondent no. 1 has cancelled the appointment of the petitioner without giving any opportunity of hearing.

In Basudeo Tiwary Vs. Sido Kanhu University and others reported in 1998 (8) SCC the Apex Court has held as under:

> *"If notice is not given to him, then it is like playing Hamlet without prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such conclusion would not be just, fair or reasonable as noticed by this court in DTC Mazdoor Sabha 1991 Supp (1) SCC 600 Case."*

It appears from the facts stated above that on 16.07.1994 the petitioner was given regular appointment on the post of Aaya on the pay scale of Rs. 750 – 940 by the Chief Development Officer / District Social Welfare Officer, Almora, who is competent authority for appointment of Class III and IV employees at the relevant time and without giving any opportunity of hearing to the petitioner the service of the petitioner was terminated.

Petitioner has also referred the order passed in writ petition no. 5196 (S/S) of 2001 (Chandan Lal Vs. Director, Samaj Kalyan, U.P., Lucknow). The present writ petition is squarely covered by the aforesaid decision.

In view of the facts and circumstances stated above, order dated 29.01.2000 passed by respondent no. 1 is quashed and the respondents are directed to appoint the petitioner on the post of Aaya.

Subject to the aforesaid, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

March 30, 2006
SKSharma